in Singapore enacted before the coming into operation of the said Order in Council. With all due respect to learned counsel this contention falls to the ground. The repeal in England of section 3 of the Statute of Frauds does not affect this State. Section 121 of the said Order in Council in my view does not affect the English laws that were introduced into Singapore by the Charter of Justice of 1826 and those laws still continue to be in force. Furthermore section 3 of the Statute of Frauds is still in force in Singapore by virtue of section 3(g) of the Civil Law Ordinance (Cap. 24).

To keep the record straight, the application of the plaintiff at the hearing to file a reply and plead section 3 and section 4 of the Statute of Frauds is granted.

For these reasons the plaintiff's claim fails and must be dismissed with costs.

Claim dismissed.

Solicitors: *Mallal & Namazie; Battenberg & Talma.*

HEW WENG KONG v. NABISHAH

[O.C.J. (Abdul Aziz J.) March 24, 1966]

[K.L. — Civil Suit No. 1579 of 1965]

Practice and Procedure — Order 14 — Leave to sign final judgment — Whether there are substantial questions to be tried — Triable issue — R.S.C., 1957, O. 14.

In this case an application for leave to sign final judgment under Order 14 of the Rules of the Supreme Court was refused as it was held that there were substantial questions to be tried.

Cases referred to:—

(1) *Codd* v. *Delap* (1905), 92 L.T. 910, H.L.

(2) *Jacobs* v. *Booths Distillery Co.* (1901), 85 L.T. 262, H.L.

CIVIL SUIT.

J. K. S. Lai for the plaintiff.

M. Abraham for the defendant.

Cur. Adv. Vult.

Abdul Aziz J.: This is an application by way of summons in chambers under Order 14 of the Rules of the Supreme Court for leave to sign final judgment.

The facts are rather complicated. The dispute centred round one of the houses in a housing estate on Lot 82 Petaling in respect of which one Tan Yew Lai was the original purchaser. Tan Yew Lai sold the property to the plaintiff by way of an agreement in May 1965 and a month later the plaintiff sold the property to the defendant also by way of an agreement for a total purchase price of $7,098. On the execution of the sale agreement the defendant paid to the plaintiff $2,618.80 towards the purchase price, the balance of $4,479.20 to be paid on or before the 31st August 1965. It was mutually agreed that time shall be of the essence of the contract. It was also a term (clause 5 of the sale agreement) that if the defendant failed to pay the balance on or before the stipulated date, 31st August 1965, then the sale agreement shall be terminated and shall be null and void and of no effect and the sum of $2,618.80 paid under clause 1 of the sale agreement shall be forfeited to the plaintiff as liquidated damages and the defendant's licence to occupy the said Lot 82 shall be terminated and the premises vacated. The defendant having failed to complete the purchase on the stipulated date, the plaintiff thereupon exercised his option under clause 5 by forfeiting the deposit money and has now issued a writ for an order of possession and damages. The defendant entered appearance to this action on the 30th November and on the 16th December, before the delivery of the statement of defence the plaintiff moved the court for leave to sign judgment under Order 14. The affidavit in support of the summons merely repeated the averments in the statement of claim and contended that there was no defence to this action and the defendant entered an appearance merely for the purpose of delay. The defendant filed an affidavit in reply admitting the execution of the sale agreement but contended that the plaintiff by his subsequent conduct has waived clause 5 of the agreement that time shall be of the essence of the contract. It appeared from the affidavit that this was not a straightforward case of breach of contract. She said that on 14th October 1965 she wrote to the plaintiff's solicitors seeking settlement and tendering $1,000. On 1st November 1965 the plaintiff's solicitors accepted the terms of settlement and gave her until 4th November 1965 to finalise the matter. Further correspondence followed but somehow settlement failed because it seemed that whilst the heads of agreement were agreeable to both parties the question of solicitors cost was unresolved. The plaintiff filed an affidavit in reply to the defendant, the main point of which was that all these negotiations for settlement were without prejudice and since the negotiations failed the defendant was precluded from referring to them.

Two leading House of Lords cases set the tone for Order 14 judgments. In *Codd* v. *Delap* [1] it was said that "Order 14 is a very useful process indeed but it has to be used with great care and must not be used unless it is clear that there is no substantial question to be tried". Again in *Jacobs* v. *Booths Distillery Co.* [2] the House of Lords coined the phrase "a triable issue" as entitling a defendant to unconditional leave to defend. In this summons no statement

of defence has yet been filed and therefore the defendant's defence is unknown. I was merely asked to try the issues on affidavits. Two things struck me from the statement of claim and the arguments. Apart from other factors one important question which may have to be tried is whether or not there has been a waiver by the plaintiff of clause 5 (i.e. that time was of the essence) by the plaintiff's subsequent conduct. If the plaintiff had treated time as being of the essence it seemed strange that he should have agreed to negotiate settlement. The other question may concern the 'forfeiture of deposit' clause. At this stage of the proceedings I am not prepared to say that there are no substantial questions to be tried.

Accordingly the application will be refused with costs. Defendant shall have unconditional leave to defend.

Application refused.

Solicitors: *Allen & Gledhill; M. Abraham.*

SIME DARBY LTD. v. PORT SWETTENHAM AUTHORITY

[O.C.J. (Ong Hock Thye F.J.) March 30, 1966]

[K.L. — Civil Suit No. 530 of 1964]

Bailment — Goods discharged from ship into custody of port authority — Loss of goods — Whether loss arose from actual fault or privity of port authority — Port Swettenham Tariff Book, Regulation 16 — Port Authorities Act, 1963.

The plaintiffs claimed damages arising from the defendants' failure to deliver some cases of whisky which were discharged from a vessel into the custody of the defendants as bailees for reward for delivery to the plaintiffs' licensed warehouse. The goods were lost and the evidence showed they had been lost during carriage from the ship to the wharf of the defendants. The defendants admitted that they were bailees for reward but contended (a) that they had not entered into any contract with the plaintiffs but had accepted the goods subject to the port regulations and the terms and conditions of the relevant bills of lading; (b) that the loss was not due to any neglect or default on their part and (c) that in any event their liability was limited by the port regulations.

Held: (1) there was in fact an express contract between the plaintiffs and the defendants as evidenced by the delivery orders and the consignment notes;

(2) the loss of the goods in this case was due to negligence on the part of the defendants' servants in leaving valuable pilferable goods untended;

(3) as the defendants were not a party to the bill of ladings they could not rely on any clause in the bills of lading;

(4) the loss of goods in this case was due to the negligence of the defendants' servants in that they were remiss in the performance of routine duties, and therefore there was no "actual fault or privity" on the part of the defendants within the meaning of regulation 16 of the Port Swettenham Tariff Book No. 1 and their liability was therefore limited under the regulations.

Cases referred to:—

(1) *J. Spurling Ltd.* v. *Bradshaw* [1956] 2 All E.R. 121 at p. 125.

(2) *Dunlop Pneumatic Tyre Co. Ltd.* v. *Salfridge & Co. Ltd.* [1915] A.C. 847.

(3) *Wilson* v. *Darling Island Stevedoring Co. Ltd.* (1955-56) 95 C.L.R. 43.

(4) *Midland Silicones Ltd.* v. *Scruttons Ltd.* [1959] 2 Q.B. 171, affirmed by H.L. [1962] A.C. 446.

(5) *The Lady Gwendolen* [1965] 3 W.L.R. 91.

(6) *Lennard's Carrying Co.* v. *Asiatic Petroleum Co. Ltd.* [1914] 1 K.B. 419, 432.

(7) *Bolton (H.L.) Engineering Co. Ltd.* v. *T. J. Graham & Sons Ltd.* [1957] 1 Q.B. 159, 172, 173.

CIVIL SUIT.

M. Shankar for the plaintiffs.

S. D. K. Peddie (*J. Puthucheary* with him) for the defendants.

Cur. Adv. Vult.

Ong Hock Thye F.J.: The plaintiffs' claim is for $24,853.19 damages suffered by reason of the defendants' failure to deliver to them as consignees 188 cases of Dewar's whisky, which were discharged from the vessel *Laomedon* into the custody of the defendants, as bailees for reward, at Port Swettenham on December 17, 1963 for delivery to the plaintiff's licensed warehouse at Port Swettenham.

The defendants by their defence admit that they were bailees for reward. They contend first, however, that they did not enter into any contract with the plaintiffs, but accepted the goods from the *Laomedon* subject to regulations 15, 16 & 17 of the Port Swettenham Tariff Book No. 1 and the terms and conditions of the relevant bills of lading. Secondly, they deny that the loss was due to any neglect or default on their part which rendered them liable to pay damages. Thirdly, they contend that in any event their liability is limited by regulation 16 of the tariff book to the sum of only $1,706.85, calculated on the tonnage of the lighter used for the carriage of the goods lost.

By their reply the plaintiffs join issue with the defendants on their defence and claim that the defendants are, in any event, liable in tort, if not in contract.

An admission of facts was filed herein under R.S.C. Order 32, rule 7, and an agreed bundle of documents put in by consent. In addition, twelve witnesses were called by the plaintiffs for the purpose of proving their title to the goods, their contractual relationship with the defendants and the manner in which the goods were handled, after coming into the defendants' custody, until they were missed. Except for one witness, who was questioned on a point which in no way affects the defendants' liability as bailees for reward,